Canada Law Journal.

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DIARY FOR SEPTEMBER.

2. Fri..Beauharnois, Governor of Canada. 1726.
3. Sat..Trinity Term ends.
4. Sun..*12th Sunday after Trinity.*
7. Wed..Court of Appeal sittings begin.
10. Sat..Sebastopol taken, 1855.
11. Sun..*13th Sunday after Trinity* Peter Russell, President, 1796.
12. Mon..Frontenac, Gov. Canada, 1672.
13. Tues..Co. Ct. sittings for York begin. Quebec taken by British, under Wolfe 1759.
17. Sat..First U. C. Parliament met at Niagara, 1792.
18. Sun..*14th Sunday after Trinity.*
19. Mon..Lord Sydenham, Gov. General, died, 1841.
24. Sat..Guy Carleton, Lieutenant-Governor, 1766.
25. Sun...*15th Sunday after Trinity.*
29. Thurs..Michaelmas Day.
30. Fri..Sir Isaac Brock, President, 1811.

TORONTO SEPT. 15, 1881.

WE are requested to announce that in the absence of any special direction as to settlement of orders made by a Judge in Chambers, the Chancellor has directed such orders to be settled by Mr. F. Arnoldi, the Clerk in Chambers, Chancery Division.

THE *Canada Gazette* of the 3rd inst. announces the appointment of the several judges of the old Courts of Law and Equity in Ontario as judges of the Supreme Court and of the High Court of Justice, and of their several Divisional Courts—a formidable array certainly, but done doubtless *e majore cautelæ.*

A CORRESPONDENT from a county town writes as follows:—"The LAW JOURNAL is greatly appreciated here, and your latest improvement, the digest of English decisions on the Judicature Act, will make it more so." He adds that there will be a number of new subscribers from his county. We are glad that our exertions to keep up with the times are appreciated.

COUNTY judges are local judges of the High Court of Justice. Do they require commissions from Ottawa as well as their brethren of Osgoode Hall? If so, these should be ready before 1882 opens. By a merciful provision of the Legislature these longsuffering "maids-of-all-work" will be saved some of the trouble that has overtaken the judges of the High Court, in that the practice will, by the end of the year, be much better understood than it is at present.

MR. DALTON is gradually evolving order out of chaos at Osgoode Hall. Despairing clerks are gradually assuming a less hopeless aspect, while those distracted masters who have sought to save them from the, we trust, temporary maelstrom of the Judicature sea, have fewer suicidal tendencies than they had a few weeks ago. The Court of Appeal is also hard at work, and the machinery of the great legal mill is again slowly revolving, with prospects of a fair amount of grist for the coming season.

WE have received from no less than four sources the advertisement of a very much certificated individual in Western Ontario. We are proud to own such a man as a brother. He is all that we are, and several things besides. Like ourselves, he gives advice free. Ours, however, is not always acceptable, being generally blunt, though to the point,

whilst his style is more ornate, and abounds in redundancy of expression. The fact that *he* remits collections promptly seems hard on the other practitioners in his neighbourhood. It is affecting to hear it stated that he is compelled to make his charges for conveyancing very low; but there is, we know, great competition, and modest merit is always at a disadvantage. The N. B. seems unnecessary, but country people are often very dense and a "damnable iteration" is a matter of necessity. The following is the professional (?) card alluded to, name "for obvious reasons" omitted:—

Solicitor to the Supreme Court of Judicature.
Attorney-at-Law, &c.

Member of the Law Society of Upper Canada, Graduate of the Law School, one of the Attorneys of her Majesty's Courts of Queens Bench and Common Pleas, and a Solicitor of the Court of Chancery for Ontario, Proctor in the Surrogate, Bankruptcy, Probate and Admiralty Courts, Solicitor in the Supreme Court and to the High Court of Judicature for Ontario. Member of the Dominion Solicitors' Association. Notary, &c., &c. Advice free. Collections promptly remitted. Conveyancing charges very low.
N.B.—Admitted to practice in all the Courts.

PAYMENT INTO COURT.

A correspondent has sent us a communication on the subject of the effect of payment into Court when actions are brought in the Superior Court which might have been brought in an Inferior Court. He observes that, although since the case of *Garnett* v. *Bradley*, L. R. 3 App. Cas. 944 taken in connection with our Order 50, r. 1 (No. 428) which provides that subject to the provisions of the Judicature Act, the costs *of and incident to all proceedings in the High Court shall be in the discretion of the Court*, such matters have not the importance they had before—yet, as a judge would probably be guided as to what was the law before the Judicature Act in allowing or in refusing costs, it is well to point out a probable misconception that existed in many minds as to the effect of payment into Court. The writer thus discusses the subject:—

"There is, as far as we are aware of, but one reported case in our own courts upon the above subject—*Leslie* v. *Forsyth et al.*, 1 C L. J. 188. In that case an action was brought in the Superior Court for a sum presumably beyond the jurisdiction of the County Court. The plaintiff accepted $152 in full of his claim in the suit, leaving the costs to be settled by agreement or taxation. A dispute then arose between the parties whether the plaintiff was entitled to County Court or Superior Court costs, the defendant contending that as the plaintiff accepted a sum clearly within the jurisdiction of the County Court, he should have only County Court costs. The matter came before C. J. Richards, in Chambers, and he certified for full costs. He states in the reported judgment of the case that 'the plaintiff is in the same position as if the money had been paid into Court, the effect of which I take it would be to admit the plaintiff's right to full costs.' In many instances, it is believed, this has been accepted as the proper view to take of the effect of such payments, which view, we think, may be seriously questioned in the light of several English authorities decided since this case was reported.

One of the earliest cases upon the subject is *Crosse* v. *Seaman*, 11 C. B., 524, where a plaintiff recovered, with an amount paid into Court, in all over £20. It was held that the proper view was to take into consideration what was recovered, or rather resulted to the plaintiff from the action, and the plaintiff was allowed full costs. This decision is only what would be anticipated from a common sense view of the Act relating to the question of costs, in the class of cases we allude to. This case was followed by *Chambers* v *Wiles*, 24 L. J. B. 267, the spirit of which is in favour of the view of C. J. Richards, in *Leslie* v. *Forsyth et al*, and no doubt he had that case in mind when he decided as he

did. This case, however, is followed by two cases, *Parr* v. *Lillicrap*, 1 H. & C., 615, and *Boulding* v. *Tyler*, 3 B. & S., 472, the latter of which distinctly followed the former, and over-ruled *Chambers* v. *Wiles*.

In both cases actions were brought in the Superior Court for sums clearly within the jurisdiction of the County Court, and the defendant in each pleaded payment into court of the specific sums claimed. The Exchequer Court affirmed the order of Martin, B., disallowing the plaintiff's costs, and expressly held that payment into Court did not, *per se*, entitle the plaintiff to his costs. In *Boulding* v. *Tyler* the Court of Queen's Bench followed the decision of the Exchequer Court, and refused to follow *Chambers* v. *Wiles*, so that the law upon the subject may now be said to be settled, and adversely to the view of C. J. Richards, enunciated in *Leslie* v. *Forsyth et al.*

In cases brought to trial the Judge might certify under sec. 347 cap. 50, R. S. O., either to entitle the plaintiff to full costs or to County or Division Court costs, or to prevent the defendant deducting costs; but in the absence of any certificate the statute apparently applies to cases where money has been paid into Court, unless the plaintiff recovers, with the money paid in, a sum in excess of the jurisdiction of the Superior Court and within the competence of the Superior Court. The wording of the sections of the English County Court Act affecting such cases, is sufficiently identical with the corresponding section in our C. L. P. Act (sec. 346, cap. 50 R. S. O.), as to lead us to believe that the decisions we refer to ought to be accepted here.

While referring to the general question of costs it may be pointed out that while costs may be refused to successful litigants, following the practice of Courts of Equity from time immemorial, still it is only in very rare instances where costs will not follow the result. In what are termed hard cases, and in cases when one of the parties has proceeded upon the faith of a decided case which by the case in question is overruled, and in a few other instances a Judge may interfere, but such interference will very rarely occur, and only for well established reasons."

LAW SOCIETY—TRINITY TERM.

The following is the *resumè* of the proceedings of Convocation, published by authority.

Monday, August 22, 1881.

Present—Messrs. Maclennan, Crickmore, Read, McMichael, J. F. Smith, Hoskin, Bethune, Moss, Glass, Mackelcan, Kerr, and Benson.

In the absence of the treasurer, Mr. Maclennan was appointed Chairman.

Ordered, that the following be appointed a special Committee to confer with the Judges of the Supreme Court of Judicature on the new rules and tariff of fees for the High Court of Judicature, namely, Messrs. Bethune, Maclennan, Hoskin, McMichael, Mackelcan, Glass, Benson, and Kerr.

Messrs. Read, Benson, Smith and Moss were appointed a special committee to report upon candidates entitled to be called with honours and to receive medals under the rules of Convocation.

The committee reported that Mr. J. H. M. Campbell was entitled to be called to the Bar with honours, and to receive a gold medal.—Ordered accordingly.

Ordered, that the following gentlemen be also called to the Bar, namely, Messrs. Watson, McBeth, Crawford, Lavell, Mills, McCarthy, McNab, Scott, C. Bitzer, Macara, McKay, O'Brian, Thompson, Kittermaster, Ford, Curry, Lewis, Gilbert, Morphy, McGill, Miller, Case, Harper, Duncombe. The above-named gentlemen, with the exception of Messrs. Gilbert and Lavell, attended, and were called to the Bar.

Ordered, that the following gentlemen do receive their certificates of fitness, namely:—Messrs. Campbell, Mills, Williams, Bitzer, Ford, Macara, Curry, McBeth, Yale, Miller, Dawson, Lefroy, Lee, Scott Cunningham, Baker, Beavers, Thompson, Sparham, Carbert, Going, and McKay.

Ordered, that the first intermediate ex-

amination of the following candidates be allowed them as students and articled clerks, namely :—Messrs. D. K. J. McKinnon, G. W. Ross, D. Thompson, H. J. Peck, W. D. Thurston, W. E. Stratton, P. S. Campbell, T. A. Elliott, W. A. Dowler, G. R. Caldwell, T. Moffatt, J. W. McCullough, F. H. Gilman, M. N. Brown, T. B. Shoebotham, A. B. Fischer, J. E. Moberly, G. T. Scilly, A. D. McIntyre, J. S. Garvin and T. E. Titus.

Ordered, that the second intermediate examination of the following candidates be allowed them as students and articled clerks, namely :—Messrs. A. Mills, P. S. Carroll, R. A. Porteous, B. M. Toothe, Hon. D. Mills, E. R. Cameron, W. Cavell, G. Davis, H. S. Blackburn, R. C. Hays, J. W. Elliott, J. A. Reid, J. F. Canniff, T. Chappell, R. Holmes, W. D. Smith, A. D. Howard, W. L. Haight, A. W. Peterson, T. E. Moberly, W. Johnston, R. Patterson, R. O. Kilgour, W. H. Barry, J. Stewart, O. M. Jones, W. J. Martin, W. Campbell, E. Poole, J. A. Thomas, W. Daly, J. B. Hands, W. E. Stevens.

Ordered, that the following gentlemen, graduates, be entered on the books of the Society as students-at-law, namely :—Hugh St. Quentin Cayley, W. D. Gwynne, T. C. Milligan, Milligan, Alfred M. Walton, Douglas Armour, Thomas B. Bunting, Walter Laidlaw, Thomas J. Blain, George W. Field, Samuel C. Smoke, Henry H. Allen, Frederick W. Hill, Chas. W. Lasby, John B. Jackson, James M. McCollum, Thomas E. Williams, George Morton, Fred E. Nelles, Alex. C. Rutherford, Frank Henry Keefer, Lucius Q. Coleman, Henry Thomas Shibley, Joseph W. St. John, and John Douglas. That the following gentlemen as Matriculants of Universities be also entered on the books as students-at-law, namely :—E. W. H. Blake, Herbert C. Parks, E. C. Higgins, William H. Holmes, and R. S. Smith.

Ordered, that the following gentlemen who have passed the examination be entered on the books as students-at-law, namely :—W. M. Douglas, G. M. Bourinot, Thomas Urquhart, A. W. Marquis, J. B. Dalzell, O. L. Lewis, Frederick Stone, A. D. Hardy, D. J. Thomson, J. C. Judd, P. Ellis, J. O'Hearn, F. McPhillips, H. Clay, R. C. Dickson, A. C. Camp, John Carson, D. H. Cole, T. Steele, A. C. Halter, M. J. McCarron, R. G. Fisher, C. Meek, F. Holmes, P. Kingston, H. G. Tucker, R. Vanstone.

Ordered, that Mr. W. M. Sinclair be entered on the books as having passed his examination as an articled clerk.

A petition from law students and others, in reference to the establishment of a Law School, was ordered to be considered on the 23rd inst.

Ordered, that Mr. Ferguson's motion in reference to a Law School do stand until the 23rd instant.

Ordered, that notices of the meetings of Convocation be sent to the Hon. S. H. Blake, as an *ex officio* Bencher.

Monday, August 23.

Present—Messrs. Maclennan, Crickmore, Read, Benson, Moss, McMichael, Kerr, Bethune, Glass and Hoskin.

Mr. Maclennan in the chair.

Ordered, that the consideration of the report of the special committee on the subject of keeping the Library open at night be postponed until the first Tuesday of next Term.

Ordered, that the motion relating to a Law School, and the consideration of the petition of students on the same subject, be postponed until 27th inst.

Mr. James Beaty, Q.C., was elected a Bencher in the place of V. C. Ferguson.

Ordered, that a call of the Bench be made for Friday, 2nd September, to elect a Bencher in place of the late W. H. Scott, deceased.

Ordered, that a portrait of Hon. Chancellor Boyd be painted for the Law Society, by Mr. Berthon.

Ordered, that the same aggregate amount of fees and fines as at present payable by attorneys and solicitors continue to be payable by solicitors of the Supreme Court of Ontario.

Saturday, August 27.

Present—Messrs. Maclennan, Crickmore, McMichael, Moss, Hoskin, Beaty, Kerr and Hardy.

Mr. Maclennan in the chair.

Messrs. Crickmore, Moss and Beaty were appointed a special committee to report forthwith as to who, if any, were entitled to honours or scholarships on the second Intermediate Examination.

The committee reported that Messrs. A. Mills, P. S. Carroll and G. Davis had passed with honours, and that Mr. A. Mills was entitled to the first scholarship, Mr. P. S. Carroll to the second scholarship, and Mr. G. Davis to the third scholarship.—Ordered accordingly.

Ordered, that the petition of law students relating to a Law School, and the subject matter of the motion on the same subject, referred to a special committee, composed of the Finance and Legal Education Committees, and of Messrs. Glass, Robertson, and Britton, to report upon the expediency of establishing a Law School, and if considered expedient, to report upon a scheme for that purpose; that the committee report at next meeting of Convocation, and that members be notified that the report will then be considered.

Ordered, that the name of Hon. S. H. Blake be added to the committee to confer with the Judges on the new orders and tariff.

Ordered, that Mr. Beaty be placed on all the committees of which Mr. Justice Ferguson was a member.

Friday, September 2.

Present—Messrs. Maclennan, Crickmore, Martin, S. H. Blake, Ferguson, Hardy, Beaty, Glass, Bethune, Kerr, Moss, Read, McMichael, Foy. Mr. Maclennan in the the chair.

The Legal Education Committee reported on the papers of Mr. F. F. Harper and E. N. Lewis, and on the petitions for admission of J. P. Eastwood and of J. W. White.

Ordered, that Mr. F. F. Harper receive his certificates of fitness; that Mr. E. N. Lewis receive his on completing his papers to the satisfaction of the Secretary; that Messrs. J. P. Eastwood and J. W. White be admitted as students in the Matriculant class.

The report of the Special Committee appointed to confer with the government on the short-hand writer's charges received and read.

The Committee on the new orders and tariff was re-appointed.

The report of the Committee on Reporting was received and read as follows:

REPORT.

The Committee on Reporting beg leave to report as follows:—

1. The Committee has had under consideration the changes which it is expedient to make in the system of reporting under the Judicature Act, and they beg to make the following recommendations:

1. That the gentlemen who have heretofore been the reporters of the decisions of the Courts of Queen's Bench, Chancery, and Common Pleas, be appointed joint reporters of the decisions of the High Court of Justice with the same salaries as heretofore.

2. That the said decisions be all printed and published in one series of volumes of the same size and in the same style, as nearly as possible, as at present, to be numbered consecutively, and to be called the Ontario Reports.

3. That the present reporter of the Court of Appeal be appointed reporter of the decisions of the Court of Appeal for Ontario, with the same salary as at present, and that such decisions be printed and published in a series of volumes to be called the Ontario Appeal Reports, uniform in size and style with the present series, and to be numbered consecutively.

4. That the present reporters of the decisions in Chancery and Common Law Chambers be appointed joint reporters of the decisions of the judges and officers of the High Court and of the Court of Appeal in Chambers, and on questions of practice, and that such decisions be printed and published in a series of volumes to be called the Ontario Practice Reports.

5. That all or any of the said reporters shall, if and whenever requested by Convocation, assist in reporting decisions in contested election cases under regulations to be made hereafter.

6. It shall be the duty of the Editor to oversee the whole work of reporting, and to insure its efficient and prompt execution, and to make such arrangements with the Judges and officers of the Courts that a report of all important decisions may be secured to the profession.

JAMES MACLENNAN,
Chairman.

The report was considered and adopted.

The Hon. Christopher F. Fraser was elected a Bencher in the place of Mr. W. H. Scott, deceased.

The report of the Special Committee on the Law School was received and read.

Ordered, that the further consideration of the report be postponed till the first Tuesday of next Term, that meantime the material portions of the report be printed, and that notice be given by the Secretary to each Bencher two weeks before the first day of next Term.

The report of the examiners on the honour examination in connection with the first Intermediate Examination, was read.

Ordered, that Mr. D. K. I. McKinnon be passed with honours and receive the first scholarship.

J. K. KERR,
Chairman Committee on Journals.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY.

September 2.

TURNER v. SMITH.

Demurrer—Married women—Separate estate.

The mere fact that a person has a claim against a married woman, does not create a lien in favour of the creditor upon her separate estate ; and a bill having been filed by the creditor against trustees of a fund to which a married woman was entitled, seeking to compel them to retain the fund until he could recover judgment. A demurrer thereto for want of equity was allowed with costs.

Muir, for demurrer.

W. Caseels, contra.

HAYES v. HAYES.

Appeal from Master—Trustee and cestui que trust—Just allowances—Special findings—Power and duty of Master as to.

The defendant was the assignee of a policy of assurance on his mother's life in trust to pay himself certain moneys and expend the residue in the support and maintenance of the assured's family,—and having made further advances on the advice of his brother who was a practising barrister, took a second assignment of the policy absolute in form. On the death of the assured the defendant asserting a right to obtain payment of the policy went to the head office of the company in the United States, in order to hasten payment, pending a dispute with the plaintiffs—the family of the assured—as to his rights. In taking the accounts between the parties the Master found that the defendant acted *bona fide* in so doing, and allowed his expenses, although the company, at the instance of the plaintiffs, refused to pay him, and sent the proceeds of the policy to their solicitor, in Toronto, to be paid over to the party entitled.

Held, on appeal from the Master (affirming his ruling) that as the defendent was under either assignment entitled to possession of the fund—either as trustee or individually—and as the Master under all the circumstances thought fit to allow such expenses, and it did not appear clear to the Court that such allowance was wrong, the item should be allowed.

Held, also, that the master had properly allowed to the defendant in his accounts a fee of $10 paid by him to counsel for advice as to his action in respect of the two assignments.

The Master, at the request of the defendant, reported specially in his favour as to money matters not particularly referred to him, but which formed the subject of charges of fraud made in the bill of complaint.

Held, that the Master had power to report specially any matters he deemed proper for the information of the Court and that it was his duty to so report any matter bearing on the question of costs.

When the case was before the Master, the plaintiffs offered to put in evidence some letters then produced but not identified. It being objected that the letters referred to a branch of the case which had been disposed of at the hearing, the Master refused to admit such evidence. No tender of any particular class or character of evidence was made, the letters being simply offered.

Held, that, as there was nothing to show that a tender of evidence of a certain character was made, or to show what the rejected evidence was, the appellants were not entitled to a reference back to admit such letters.

Donovan, for appeal.

E. Douglas Armour, contra.

LIVINGSTON v. WOOD.

Judgment—Amending decree to conform to—Costs.

By the decree an assignment of a bond was declared to have been given as a security only, and a further declaration that certain credits were due to the plaintiff, and referred it to the

Master to take the accounts. In proceeding under the decree the defendant was hampered by the declaration in the decree, the Master holding that he was bound by it. On petition to amend the decree, so as to make it conform to the judgment,

Held, that, as it appeared that the judgment was directed solely to the fact that the bond was assigned as a security only, and that the view taken as to the credit was a ground for the holding as to such assignment, and was not a substantial part of the judgment, and the declaration in the decree as to the credit was, therefore, unauthorized.

Hoyles and *Gwyn*, for the petition.

Walter Cassels, contra.

DICKSON V. HUNTER.

Mortgagor and mortgagee—Fixtures.

The plaintiffs were registered mortgagees of a large tract of land. M., desiring to build a mill in a village where part of the land lay, took a deed of a small portion thereof from one of the owners of the equity of redemption, conditioned that he should erect a flouring mill thereon. M., without searching the title and without actual notice of the plaintiff's mortgage, erected the mill with the intention of establishing a business there. Before its completion and before the machinery was put in, he discovered the mortgage, but proceeded to put in a boiler, engine, mill stones and several machines necessary for carrying on milling. On the plaintiff's attempting to sell under their mortgage, the machinery was removed by M. An injunction was granted to stay the removal, and an issue was directed to try the title to the mill and machinery. A number of the machines were not attached to the building, being kept in place by their own weight; but they were necessary for the working of the mill, and suited for that purpose only, and the whole structure—building, engine house, boilers, engine and machinery—was put up with the express purpose of establishing a flouring mill on land that M. believed to be his own.

Held, that the mill and its contents passed to the mortgagees; and an order was made for restitution of the machinery which had been removed, and the injunction extended to prevent its removal in future, with liberty to M. to pay its value to the plaintiffs, which they should accept, if offered, and release the machinery.

Moss, for the motion.

Walter Cassels, contra.

BEATY V. SAMUEL.

Trust for creditors—Secured creditor—Rights of—Creditors not scheduled under Insolvent Act 1875.

The plaintiff, the holder of a chattel mortgage with a covenant for payment, was not scheduled in proceedings in insolvency under the Act of 1875, but he was aware of the proceedings, and the insolvent obtained a final discharge.

Held, that the debt under the chattel mortgage was not extinguished.

A subsequent common law assignment for the benefit of creditors was made by the debtor of all his property to the defendant in trust to pay expenses &c., and "to apply the balance in or towards payment of the debt of the assignor in proportion to their respective amounts without preference or priority.

Held, that the plaintiff was entitled to sue for his whole debt and therefore to share in the estate proportionately under the deed for the whole, and that he was not bound to value his security and rank for the balance only.

Beaty, Q. C., for plaintiff.

Thomson, for defendant.

TAYLOR V. HALL.

Injunction—Unpaid costs of former motion—Amendment—Service of notice containing—Sufficiency of.

A motion by the plaintiff to continue an *ex parte* injunction was refused with costs, but at the same time leave was given to apply on the return of the motion to amend, and a new injunction was granted *ex parte*. On the return of the motion to continue the latter it was objected that the costs of the former motion had not been paid, which, however, had not been then taxed.

Held, that the non-payment before taxation was no objection to the motion proceeding.

The proposed amendments to the bill were set out substantially in the order for the injunction, which was served on the defendant.

Held, that as the defendant had thereby notice of the proposed amendments, it could not be objected to the motion that the amended bill had not been served.

It appeared that there was a substantial question to be tried, and that no irreparable injury could result by preserving the subject matter of the suit *in medio*, the injunction restraining the defendant from dealing with it was continued to the hearing.

J. H. Macdonald, for plaintiff.

A. Hoskin, Q.C., for defendant.

DUMBLE v. COBOURG AND PETERBOROUGH RAILWAY COMPANY.

Review—Fresh evidence.

In applications to open up proceedings by way of review on the ground of newly discovered evidence, it is necessary for the party applying to establish (1) that the evidence is such that if it had been brought forward at the proper time it would probably have changed the result; (2), that at the time he might have so used it, neither he nor his agents had knowledge of it; and (3) that it could not with reasonable diligence have been discovered in time to have been so used.

Where, therefore, a railway company in the construction of their road took possession of and built their road across a plot of land of the plaintiff, who instituted proceedings to compel payment therefor, and under the decree a sum of $1,800 was found to be the value of such plot, which sum, together with interest and costs, was paid by the company in order to prevent the land being purchased by a rival company, and three years afterwards they applied on petition to have a portion of such purchase money refunded, on the ground that another railway company, whose rights had been assigned to them, had previously paid a prior owner of the land for a portion thereof.

The Court [FERGUSON, J.] refused the relief asked with costs, as the company, had they exercised due diligence in the matter, might have become aware of such prior purchase and payment.

H. Cameron Q. C., and Moss, Q.C., for defendants.

Watson, for plaintiff.

CHANCERY CHAMBERS.

Boyd C.] [Sept. 5.

RE LAWS—LAWS v. LAWS.

Appeal—Notice of—O. J. A. sec. 38.

The notice of appeal required by R. S. O., cap. 38, sec. 26 (sec. 38 O. J. A.) was duly served upon the respondents' solicitors, and they always supposed the judgment to be subject to appeal. But by an oversight of the clerk of the appellant's solicitor, notice of appeal was not given in time to the Registrar of the Court appealed from.

BOYD C., *held* that this was a proper case to exercise the discretion given by the statute, and allowed the notice to be filed within four days on payment of costs of this application.

F. B. Robertson, for appellants.

Delamere, for respondents.

Mr. Stephens.] [Sept. 5.

RE SOLICITORS.

Taxation—Solicitor and client—Form of order—Rule 443.

H. Cassels applied, on behalf of the client, for an order to tax a solicitor's bill of costs, more than a month having elapsed since the delivery of the bill.

Application granted.

Order to issue in the long form in use before the O. J. A., as the Master is mentioned in R. 443, but the taxing officer is the proper officer to tax bills of costs under the act, R. 438.

Ferguson, V. C.] [Sept.

KING v. DUNCAN.

Money paid into Court pending appeal.

Where money is paid into Court for a specific purpose, the party paying it in is entitled to withdraw it when that purpose has been answered in his favour. The bill was filed for an injunction to restrain the defendant from receiving the proceeds of a judgment and execution against his co-defendants, alleged to be fraudulent, the money was directed to be paid into Court "to abide the further order of the Court." The injunction was refused and

the plaintiff gave notice of appeal, and applied for an order to retain the money in Court, pending the appeal.

Held, on appeal from the referee reversing his order, that the money had not been paid into Court for any specific purpose, but to abide the further order of the Court, that it represented the subject matter in the suits, that it was in the discretion of the Court to act in the premises, and that the moneys should remain in Court pending the appeal unless security were given instead.

D. E. Thompson, for the appeal.

Hoyles, contra.

Ferguson, V.C.] [Sept.

PETRIE v. GUELPH LUMBER CO.

Undertaking to speed cause—Dismissal of bill—Relief from undertaking.

The plaintiff undertook upon a motion to dismiss his bill, to bring the cause down at the then next sittings at Guelph. From some correspondence it appeared that if the plaintiff had set his cause down for the then next Guelph sittings, a postponement would have been asked for on the ground of the attendance at the House of Commons of a member who was a defendant. The plaintiff offered to bring the cause down to the then next sittings at Toronto, to which a conditional consent was given; but the cause was not set down. The Referee dismissed the bill.

Held, on appeal, reversing the Referee's decision, that the plaintiff was relieved from his undertaking to bring the cause down to Guelph under the circumstances, and that he was under no obligation to bring the cause down to Toronto, and as no intentional delay was shown on the part of the plaintiff, the bill was restored.

McCarthy, Q.C., for the appeal.

S. H. Blake, Q. C., *W. Cassels*, *Bethune*, Q.C. and *Hoyles*, for the several defendants.

Mr. Stephens.] [Sept. 12.

ADAMSON v. ADAMSON.

Appeal bond—Registration of conveyance of land owned by surety.

This was a motion to disallow a bond given on an appeal.

In the course of the examination of one of the bondsmen, he stated that he had had for some years conveyances to himself of certain lands, but had not registered them. It appeared that the lands were of sufficient value.

Langton, for the motion, objected to the sufficiency of the surety, unless the alleged conveyances were registered, and cited *Curry* v. *Curry*, before the late C. J. of Ontario, not reported, in which a surety was directed to make his title to certain land under similar circumstances a registered one.

Barwick, contra.

MR. STEPHENS directed the conveyances to be registered.

Mr. Stephens.] [Sept. 12.

WETHERHEAD v. WEATHERHEAD.

Service—Infant out of jurisdiction, Rule 36 O. J. A.

This was a partition suit.

W. Roaf applied for an order allowing substitutional service of the bill, on the official guardian of an infant defendant. The infant being resident without the jurisdiction of the Court, and no provision being made for such a case under Rule 36 O. J. A,

MR. STEPHENS allowed the order to go on the ground that the share of the infant in the lands in question amounted to only $40, and substitutional services would be inexpensive.

Boyd C.] [Sept 13.

MCFARLANE v. MCFARLANE.

Examination after answer and disclaimer when fraud charged in bill.

This was a bill to set aside a conveyance as obtained by fraud.

One defendant, the wife of another defendant, filed an answer and disclaimer denying all charges of fraud made against her in the bill, and disclaiming all interest in the subject matter of the suit and asking her costs.

On examination after answer she declined to answer any questions relating to the alleged fraud.

On motion to compel her to attend and be examined at her own expense,

BOYD, C., *held*, that the questions were proper ones to be put and granted the application.

H. Cassels, for the motion, cited *Graham* v. *Cafe*, 9 Symons 93, confirmed on appeal 3 Milne & Craig 98; *Whitney* v. *Rush*, 2 Younge & Collyer, Exchequer R. 546.

W. H. Macdonald, contra, cited *Kerr* v. *Reed*, 22 Gr. 538; *Chaffers* v. *Day*, 3 Weekly Reporter 263; Kerr on Discovery p. 207.

COMMON LAW CHAMBERS.

Osler, J.] [August 10.

REGINA v. BERRY.

Coroner—Jurisdiction—Discharge of prisoner—Inquisition.

A coroner for the County of Carleton was held to have jurisdiction to hold an inquest in the city of Ottawa, situate in that county. An inquisition was, however, held to be defective in not identifying the body of the deceased as being the person with whose death the prisoner was charged, and the prisoner was discharged from custody under the coroner's warrant, but recommitted, as the evidence shewed that a felony had been committed.

Mr. Dalton, Q. C.] [Sept. 8.

ROMANN v. BRODRECHT.

(By original action.)

BRODRECHT v. FICK.

(By counter claim.)

Counter claim—Set-off—Third party—Defendant—Rules 164-165.

Where a defendant by a counter claim puts in a set-off against plaintiff's action, he cannot by his counter claim bring in a third party as a defendant and raise an issue as between himself and such third party, in which the plaintiff is not concerned; such issue must be determined by a separate action.

W. H. Clement, for plaintiff.

J. H. Macdonald, for defendant.

Mr. Dalton, Q.C.] [Sept. 13.

ELLIOT v. CAPELL.

Attachment—Garnishee—Costs.

A defendant who has obtained a judgment for costs may garnishee moneys due to the plaintiff.

The question of the validity of a judgment should not be argued on the return of a garnishee summons, but should be raised on an application to set aside the execution.

Aylesworth, for plaintiff.

J. H. Macdonald, contra.

Mr. Dalton, Q. C.] [Sept. 13.

MCDONOUGH v. ALISON.

Service by mailing—Notice of trial.

Plaintiff's and defendant's attorneys had an arrangement between themselves by which the papers in the suit should be sent by mail. The notice of trial was posted the day before the last for giving notice, but reached defendant's attorney one day too late.

Held, that the notice of trial cannot be set aside.

W. H. Clement, for plaintiff.

W. Fitzgerald, contra.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared from the various Reports by A. H. F. LEFROY, ESQ.)

BAINES v. BROMLEY.

Imp. O. 55, r. 1—Ont. O. 50, r. 1, No. 428. Practice—Costs—Claim and counter-claim.

In an action for a liquidated money claim, after trial with jury, judgment was entered for the plaintiff on his claim, but for the defendants for a balance on a counter-claim for goods sold, the amount of which exceeded that of the claim. The judgment directed that the "plaintiff should recover against

* It is the purpose of the compiler of the above collection to give to the readers of this Journal a *complete* series of all the English practice cases which illustrate our present practice, reported subsequently to the annotated editions of the Ontario Judicature Act, that is to say since June, 1881. "L. J. R." stands for the English Law Journal Reports.

the defendants his costs of suit, and that the defendants recover the costs of the counter-claim: "

Held (reversing the judgment of the Exchequer Division), that the plaintiff was entitled to the general costs of the cause.

[C. of A., April 26—50 L. J. R., p. 465.

The facts sufficiently appear from the above head-note. The Master, on taxation, gave the defendants the costs of the cause. The plaintiff appealed, and LOPES, J., having referred the matter to the Court, the Exchequer Division dismissed the summons to review the taxation.

The plaintiff appealed.

BRAMWELL, L. J.—I am of opinion that this appeal must be allowed, because of the terms in which the judgment was expressed; the plaintiff has not had "his costs of suit" taxed to him. No doubt the judgment of the Exchequer Division would be right if the old rule, that the party in whose favour the balance is, on the whole, is entitled to the costs of the cause, which still exists, applied to this case; but that is not the judgment which was here given. I may add that I think cases of set-off and counter-claim are susceptible of different considerations.

BRETT, L. J.—I also think that this appeal must be allowed. The judgment is entered and the costs by it are dealt with as if the defendants had met the plaintiff's claim by a counter-claim in the nature of a cross-action, and not of a set-off, and such judgment stands unchallenged. The question is, How ought the costs to be taxed, when in such a case the plaintiff succeeds on his claim, and the defendants on their counter-claim? If this had been treated as a pure set-off to the amount of the plaintiff's claim, as I think it might have been, and had so appeared on the judgment, then it seems to me that the defendants would have been entitled to the costs of the action, because then the defendants would have denied by way of defence that the plaintiff had any right to bring an action at all. There may be a case where the defence is partly by way of set-off and partly by way of counter-claim, as where the defendant asserts his right to recover the amount of balance due after satisfying the plaintiff's claim by his set-off. It is not necessary to say now how the costs in such a case are to be taxed, because here the judgment is in form not that the defendants have a set-off, but a counter-claim only. It is as if the defendants chose to deny the whole of the plaintiff's claim and to rest on their cross-action. The costs have been taxed, however, as if the plaintiff had not succeeded at all in his action, but only on certain issues, and I think that that was wrong. That alone is sufficient to sustain the appeal. I have, however, a firm opinion that where there is a claim with issues taken on it, and a counter-claim, not a set-off, but in the nature of a cross-action with issues on it, and where the plaintiff succeeds on the claim and the defendant on the counter-claim, the proper principle of taxation, if not otherwise ordered, is to tax the costs of the counter-claim and its issues as if it were an action, and then to give *the allocatur* for costs for the balance in favour of the litigant in whose favour the balance turns. In such a case where items are common to both actions, the Master would divide them. Where the so-called counter-claim is a set-off there is but one action.

COTTON, L. J.—The sole question is whether under this order and judgment the costs have been rightly taxed. The judgment was that the the plaintiff "recover his costs of suit," and not merely the cost of issues found in his favour. I is clear that the judgment has not been followe d those costs have not been allowed to the plaintiff, and the taxation must be allowed.

Appeal allowed.

[NOTE.—*Imp. O. 55 r. 1., and Ont. O. 56 r 1 (No. 428) are identical.*]

WALKER v. ROOKE.

Imp. O. 45, *r.* 2—*Ont. O.* 45, *r.* 5, *No.* 370—*Garnishee order—Partnership firm.*

A garnishee order will not be granted on partners in the name of their firm.

[Q. B. D., April 26.—50 L. J. R., p. 470.

This was an application *ex parte* on appeal from a judge at chambers. The order sought was a garnishee order attaching a debt due "from Messrs. Marshall and Snelgrove to the defendant."

The Master refused to grant the order, and the Judge at Chambers affirmed his decision Plaintiff appealed to Divisional Court.

Horne Payne, for the plaintiff. Before the consolidation of the three common law divisions

the practice in each division differed. The C.P. and Q.B. Divisions required the names of the partners to be given.

[LORD COLERIDGE, C. J.—Order 55 r. 2. is taken from the C. L. Proc. Act 1854, and in each section the word "garnishee" is used in the singular number.]

It is submitted it was the intention of the Judicature Act to include "firms" under the words "any other person," and to allow service of garnishee orders on the firms in the same way as service of writs.

Per CURIAM.—The decision of the Master was right, and must be affirmed.

[*Imp. O. 45 1, 2, and Ont. O. 41, 1, 5 (No. 370) differ slightly, but not so as to affect the point here decided. Under our order the affidavit in support need not be sworn by the judgment creditor or his solicitor.*]

RUDOW V. THE GREAT BRITAIN MUTUAL LIFE ASSOCIATION SOCIETY.

Costs—Formal Party.

C. of A., April 26——50 L. J. R. 504. 44 L. T. 688.

JESSEL, M. R.:—The proper practice now is, not, according to the old practice, to direct a plaintiff to pay the costs of a necessary but formal defendant, and to have them over again against the principal defendant, but to pay such a defendant his costs by a direct order. Both the Lords Justices now sitting with me agree with me that that is now the proper practice.

[NOTE.—*The principal point in the above case concerned the interpretation of certain clauses of the Companies' Act*, 1862, *but the above observations appear worthy of note.*]

ELLIS V. ROBBINS.

Imp. O. 37, r. 1; O. 40, r. 1—Ont. O. 32, r. 1, No. 282; O. 36, r. 1, No. 315—Practice—Motion for judgment—Evidence by affidavit.

On motion for judgment the Court has no power, under Rules of Court, to order that the evidence shall be taken by affidavit.

[Ch. D. April 28——50 L. J. R. 512.

This was an action for the purpose of rectifying a mistake in a settlement, made by the plaintiff on the occasion of his daughter's marriage. The trustees of the settlement, the plaintiff's daughter and her husband, and their infant child were defendants. A statement of claim was delivered, but no statement of defence were put in, the action being in effect a consent action, and it being conceded that there had been a mistake which ought to be rectified as asked by the statement of claim.

Evidence by affidavit had been given in support of the allegations contained in the statement of claim, and the action had been set down on motion for judgment.

On the action coming on for hearing,

Graham Hastings and *Whately* submitted the question to the Court, whether the Court had power in motion for judgment to accept evidence by affidavit, so as to make a judgment in default of pleading, which would be binding on the married woman and infant defendants. They pointed out that Order 37, r. 1., giving power to the Court to order the evidence to be taken by affidavit, relates only to the trial or hearing of an action, while Order 40, which relates to motion for judgment, is silent on the subject of giving evidence by affidavit.

H. N. Rooper, for the defendants.

HALL, V. C., gave judgment for rectification of the settlement, but directed that notice of trial should be given to the defendants, the infant and married woman, and that the motion should be placed in the paper again on the application of any party *pro forma*, in order to be disposed of.

[NOTE.—*Imp. O. 37, r. 1, and Ont. O. 32, r 1 (No. 282), are virtually identical. Imp. O. 40, r. 1, and Ont. 35, r. 1 (No. 315) are identical.*

ROBINSON V. PICKERING.

Imp. Jud. Act, 1873, *sec. 25, s. s.* 8—*Ont. Jud. Act, sec.* 17, *s. s.* 8—*Married woman—Separate estate—Injunction to restrain dealing with*

The Court will not, in an action by a creditor who has dealt with a married woman on the faith of her separate estate, grant an injunction to restrain her from parting with that estate until the creditor has established his right by obtaining judgment.

[C. of A. February 23——10 L. J. R. 527:

This was an appeal from a decision of Malins,

V. C., who granted an injunction, the nature of which sufficiently appears from the above head-note. The husband and wife appealed.

A. Terrell, for the appellants, cited *Johnson* v. *Gallagher*, 3 Deq. F. & J. 495; 30 L. J. R. Ch. 298; *Owens* v. *Dickenson*, Cr. & Ph. 48; *Murray* v. *Barlee*, 4 Sim. 82; 3 Myl. & K. 209, 3 L. J. R. Ch. 184.

Dundas Gardener, for the plaintiff. The Judicature Act, 1873, s. 25, s. s. 8, authorizes the Court to grant an injunction whenever expedient.

JESSEL, M. R., thought, with great respect to the V. C., that the order had been made improvidently, without regard to the settled law on the subject. The general engagements of a married woman, contracted on the faith of her separate property, no doubt bound that property in this sense, that the creditor could obtain a judgment against the separate estate and could then obtain payment out of it. The married woman stood in much the same position as a man did, who, under the old law, could not be made a bankrupt. The creditor could not get mesne process against the property until he had established his right by a judgment. If this were not so, every married woman who depended on her separate estate would be left to starve as somebody alleged that she was indebted to him. According to well established principle and settled law, creditors of a married woman who had obtained no judgment could not interfere with her right to deal with her separate property.

JAMES, L. J., was entirely of the same opinion. At one time there was a notion that the engagements of a married woman were in the nature of charges on her separate estate. But it was afterwards pointed out that the relation was only that of debtor and creditor with a right to go against the particular fund. If there was a charge, then, as was pointed out by Lord Cottenham in the case of *Owens* v. *Dickenson*, different creditors would have priority in the order of date of their charges. The creditor's only right was to get judgment for his debt, and then execution would go against the separate estate. He agreed with the M. R. that a creditor could no more obtain such an injunction against a married woman than against a man.

LUSH, L. J., concurred, holding the law to be quite settled on the point.

[NOTE.—*Imp. Jud. Act, 1875, s. 25, s. s. 8, and Ont. Jud. Act, s. 17, s. s. 8, are identical.*

CLARKE V. BRADLAUGH.

Time from which writ takes effect—Day, fractions of—Fiction of law.

It appeared from the statement of claim that the writ of summons in the action issued on the 2nd July, and that on the same day, but before the issuing of the writ, the cause of action arose. The statement of claim was demurred to, on the ground that the issuing of the writ of summons being a judicial act, must be considered as having taken place at the earliest moment of the day, and, therefore, before the cause of action accrued:—

Held, that the Court could, for this purpose, take cognizance of the fact that the writ did not issue till later in the day than the cause or action accrued, and that the statement of claim was therefore good.

[Q. B. D. June 21; L. R. 7 Q. B. D. 151; 44 L.T.779.

The facts of this case sufficiently appear from the above head note.

The defendant in person, in support of the demurrer, cited *Reg.* v. *Edwards*, 9 Ex. 32, 628; *Wright* v. *Mills*, 4 H. & N. 491, and several other cases.

Sir Hardinge Giffard, Q.C. (*Kydd*, with him), for the plaintiff, contended that the issuing of a writ of summons in an action was substantially the act of the party, and not a judicial act within the meaning of the doctrine above referred to, and that the Court could take cognizance of the fact that the cause of action occurred earlier in the day than the issue of the writ.

DENMAN, J.:—I am of opinion that this demurrer must be over-ruled. . . . No doubt, in several of the cases cited, very strong consequences, consequences which one would hardly have expected to follow from any legal doctrine, have been held to follow from the legal doctrine applied in those cases, which, roughly stated, is that Judicial Acts are referred back to the first moment of the day on which they are done. . . . But I am of opinion that the doctrine in question is not applicable to such a case as this. It is a fiction of law, and the doctrine underlying all the doctrines with regard to fictions of law would be violated if we sustained the defendant's contention. A fiction of law exists for the purpose of doing justice in the particular case. If this doctrine were applied, as contended for, to a writ of summons, it could never tend to justice, but always must tend to injustice. It would be arbitrarily saying that wherever a wrong was

committed, the party committing it should have a certain latitude of time in which he might withdraw himself from the jurisdiction of the Court. . . . It may be suggested that the doctrine, though it may appear in some cases to be otherwise applied, is really, when it comes to be carefully looked at, that where there are conflicting claims between subject and subject, the Court can look to the fractions of a day, and that this is a case of such claims; but I do not think it necessary in the present case to lay down the exact limits of this doctrine, and to what cases it is and to what it is not applicable. I think it cannot be applied to this case. . . . It would be giving priority to the writ in order to defeat the object of its being issued. It seems to me impossible that it can apply to a writ of summons for this purpose, and no authority has been cited to show that it does.

WATKINS WILLIAMS, J.:—I am of the same opinion. . . . Here we have admitted on the record a positive averment that the cause of action preceded the writ, and we are asked to rely, in the face of the express averment, on a supposed inference derived from a fiction of law that the writ preceded the cause of action. I do not think there is any authority which compels us so to violate the rules of common sense. I think, therefore, the demurrer must be overruled, and there must be judgment for the plaintiff.

BREE v. MARESCAUX.

Imp. O. 11, *r.* 1—*Ont. O.* 7, *r.* 1 (*No.* 45)—*Practice—Service out of the jurisdiction.*

[June 15.—19 W. R. 858, 44 L. T. 644.
In appeal, 44 L. T. 765.

E. F. Silvester moved by way of appeal from the decision of CAVE, J., at Chambers, for leave under Order 11, r. 1, to serve the defendant out of the jurisdiction, such rule giving the Court power to allow such service where, *inter alia*, "any act or thing for which damages are sought to be recovered was or is done within the jurisdiction." The complaint, the subject of the action, was slander alleged to be spoken by the defendant to the representative of the Royal Mail Steam Packet Company, on board one of the Company's vessels on a voyage to Kingston, Jamaica, and which consisted of a charge of misconduct against the plaintiff, a ship's officer in the service of the said company, and which it was stated in the affidavit in support of the application "was intended to be transmitted and was transmitted to the said company in London." The result of making such charge was the dismissal of the plaintiff from the company's service when he with the vessel arrived in England.

The appeal, however, was dismissed.

DENMAN, J., said:—"The whole question turns upon the meaning of O. 11, r. 1. . . In the present case the action suggested is one which would be brought for the utterance of words abroad resulting in special damage to the plaintiff in England. The act would not of itself be actionable but for the special damage. But would the fact that the special damage occurred in England bring the case within the words that 'the act or thing was done within the jurisdiction?' It appears to me that it would not. The 'act done' would be the words spoken by the defendant out of the jurisdiction, but he did not do anything within the jurisdiction. It is true that something occurred afterwards within the jurisdiction which made the plaintiff's cause of action complete, but it was not the act of the defendant. This construction may seem a technical one, but it appears to me that the case is not brought within the words of the Order."

WILLIAMS, J., said:—"The case would seem to be analogous to that of a wound inflicted by a shot fired from without the jurisdiction, but it is one in which opinions might differ, and on the whole, therefore, I think that the appeal must be dismissed."

The case was then carried to the Court of Appeal, and judgment given on June 22nd, affirming the judgment of the full Court.

In the course of the argument, BRAMWELL, L. J., referred to a case in which he was counsel where MAULE, J., said that the special damage was the cause of action: which case the *Law Times Reporter* notes is probably *Wilby* v. *Elston*, 18 L. J., C. P. 320.

In giving judgment, BRAMWELL, L. J., said: If what the plaintiff complains of is the speaking of the words, that did not take place within the jurisdiction. If on the authority of the case before MAULE, J., to which I have referred, the cause of action is the damage,

the cases show that a man is not liable for the repetition of slander by some one else. . . Here I cannot see how Marescaux caused the damage. It is said in the plaintiff's affidavit that the slander complained of was intended to be transmitted to England, but I cannot see how this was intended by Marescaux. The plaintiff, therefore, is in the dilemma which I have pointed out. If it is necessary to distinguish the present case from the *Great Australian Gold Mining Co.* v. *Martin*, L. R. 5 Ch. D. 1, that case is distinguishable by the affidavit which was used, and which stated that the secretary of the company was informed and believed that the defendant made in England certain representations whereby the plaintiff company was induced to issue debentures and shares, and incur expenses in England. (L. R. 5 Ch. D. 18). For these reasons I am of opinion that the application must be refused.

BRETT, L. J.:—I am of the same opinion for the same reasons.

COTTON, L. J.:—I have nothing to add.

[NOTE.—*Imp. O.* 11, *r.* 1 *and Ont. O.* 7, *r.* 1, *are virtually identical.*]

DYER V. PAINTER.

Imp. O. 50, *r.* 3—*Ont. O.* 44, *r.* 2, *No.* 384.

[Ch. D. June 24.—W. R. 105.

Upon the death of the plaintiff in an administration action, his widow and executrix, who has thereby become entitled absolutely to her husband's share in the testator's estate, is entitled to carry on and prosecute the action and the proceedings thereon in like manner as the deceased plaintiff might have done if he had not died, by obtaining an order of course at the Rolls, without the necessity of a special application at the chambers of the judge in whose Court the action is pending.

[NOTE.—*Imp. O.* 50, *r.* 3, *and Ont. O.* 44, *r.* 2, *are identical.*]

WILLMOTT V. BARBER.

[Ch. D. June 24.—W. N. 107.

Imp. O. 55—*Ont. O.* 50, *r.* 1, *No.* 428.

Practice—Costs—Discretion of Judge—Costs by way of penalty.

In this case, which is reported 15 Ch. D. 96, an action had been brought for specific performance of an agreement for the sale of land, and the defendant, who was the vendor, brought a counterclaim charging the plaintiff with acts of trespass and waste. Mr. Justice Fry thought that the plaintiff had failed in his claim, and that the defendant had also failed in his counterclaim, and made an order dismissing the claim without costs; and also dismissing the counterclaim, and ordering that the defendant should pay the costs of the counterclaim, and that if the costs of the counterclaim should exceed half the whole costs of the claim and counterclaim the defendant should pay the plaintiff the excess.

The defendant appealed from the latter part of the judgment.

Bagnold (*North*, Q. C., with him), for the appellant, objected to the order as to costs as being beyond the jurisdiction of the judge. He had dismissed the claim without costs, and then had ordered the defendant to pay some costs beyond the costs of the counterclaim by way of penalty.

Cookson, Q. C., and *T. A. Roberts*, for the plaintiff.

JESSEL, M. R., said that no doubt a judge could not impose costs beyond the costs of the suit by way of penalty. But the order was only wrong in form. What the judge meant to do was to order the defendant to pay half the whole costs of the claim and counterclaim, and he had full power to do that. The order should have been that the claim be dismissed without costs except as thereafter declared, and then a declaration that the defendant should pay half the costs of the claim and counterclaim.

BAGGALLAY and LUSH, L.JJ., concurred.

REAL AND PERSONAL ADVANCE COMPANY V MCCARTHY.

Costs—Defendant—Withdrawal of defence—Costs "so far as they were occasioned by defence."

[Ch. D. July 29.—D. N. 109.

In this case Fry, J., allowed a defendant to withdraw his defence and ordered him to pay the plaintiffs their costs of the action so far as occasioned by his defence (14 Ch. D. 188). The taxing-master in taxing the costs under this

order, disallowed all the general costs of the suit, and allowed those only which were occasioned exclusively by the defendant's defence. Fry, J. agreed with the taxing-master. The plaintiffs appealed.

Cookson, Q.C., and *Creed*, for the appeal.

North, Q.C., and *Speed*, contra, were not called upon.

THE COURT (Jessel, M.R., and Baggallay and Lush, L.JJ.) dismissed the appeal.

LAIRD V. BRIGGS.

Imp. O. 27, *r.* 1—*Ont. O.* 23, *r.* 1, *No.* 278. *Amendment of Pleadings—Alteration of case.*

[Ch. D. July 26.—W. N. 120.

This was an appeal by the defendant from a decision of Fry, J., reported 16 Ch. D. 440, granting an injunction to restrain the defendant from removing shingle from a part of the foreshore at Margate, and refusing the defendant leave, at the trial, to amend his defence, so as to turn a qualified denial of the plaintiff's possession to the foreshore in question, into an unqualified denial of mere possession.

THE COURT (Jessel, M.R., Brett, and Cotton, L.JJ.) held that an amendment ought to have been allowed, and that upon the true construction of the building agreement under which the plaintiff claimed to be entitled to the *locus in quo*, he had no title or estate therein whatsoever, but only a right of entry for the purpose of the building agreement, and on this ground allowed the appeal with costs.

[NOTE.—*Imp. O.* 27, *r.* 1 *and Ont. O.* 23, *r.* 1 *are identical.*]

IN THE COUNTY COURT OF THE COUNTY OF ELGIN.

FRAZER—APELLANT, AND THE INSPECTOR OF LICENSES OF THE COUNTY OF ELGIN, RESPONDENT.

Liquor License Act, Sec. 18.—Locality covered by License.

A licence to sell spirituous liquors under the Liquor Licence Act gives the licensee the right to sell liquors not merely in the hostelry, but also in buildings in its vicinity on the same premises and within the same enclosure.

[St. Thomas, August 17.—Hughes, Co. J.

This was an appeal by an innkeeper, having a licence limited for six months, under the 18th section of the Liquor License Act, his premises being largely resorted to by visitors in summer and shut up during the rest of the year. The premises consisted of a large summer hotel, pleasure grounds, gardens, a dining booth, a bar-room and ice cream saloon. All (except the two last named, which were contiguous to each other) were in buildings separated from the house. Adjoining his premises and leading *into* them, are other pleasure grounds belonging to the Railroad Company of which the appellant was the lessee, which were also used by excursionists in summer time. The appellant sold liquors under his licence in the hotel, and also in the bar-room constituting a separate building at the entrance of and on his own premises adjoining the picnic grounds, claiming that he had a right to do so under his licence. The Magistrate, on complaint of the Inspector, decided that the license was confined to the *hotel*, and convicted and fined him $20, as for selling in the out-of-doors bar-room without license.

The innkeeper appealed to the County Judge.

C. Macdougall, for the appellant.

Stanton, County Crown Attorney, for respondent.

The other facts appear by the following judgment of

HUGHES, Co. J.— This is a question entirely affecting the revenue, and not one of morality or for the suppression of drunkenness. The Inspector of Licences prosecuted here for and on behalf of the public because, as is alleged, the appellant unlawfully sold by retail, liquor in a certain outbuilding erected on the Fraser grounds, at Port Stanley, without having first obtained a License under the Liquor License Act authorizing him to do so, contrary to the 39th section of that Act. The facts are, as I understand them, that the appellant is the proprietor of an hostelry and certain pleasure grounds at Port Stanley, where thousands of pleasure seekers resort during the summer season for recreation, health, and amusement, and is one of those places referred to in the last sentence of the 18th section of the Act. The appellant

does, in fact, hold a license authorizing him to sell spirituous and fermented liquors in and upon "*the premises known as Fraser House in the village of Port Stanley, under a tavern licence as defined by the statutes in that behalf.*"

It must be observed that the words in the licence are general, the definite article "*the*" is not used to designate the house, "*the premises known as Fraser House*" &c., are the words employed; it is limited in duration for it is a license for six months, as being a place largely resorted to in summer by visitors.

The 14th section of the Act limits the operation of every license to *the person* of the appellant, and for *the premises* therein described, to remain valid only so long as he continues to be the occupant of the premises, and the true owner of the business carried on therein. This provision is made for obvious reasons. First, as I take the meaning to be, that the sale shall be restricted to the person, whose character has been duly vouched for as one who may be properly trusted with a licence; and secondly, that the premises are suited to the accommodation of the public, for the purposes for which they are licensed; in proof of this, if we refer to the 9th section we find that the license to sell is granted only upon petition by the applicant to the License Commissioners, and upon the report of the Inspector that the applicant is a fit and proper person to have a licence, that he has all the accommodation required by law, and that the applicant is known to the Inspector to be of good character and repute, so that the character of the applicant and accommodation for the public are prime essentials. The question then arises, how far and to what extent does this license reach, so as to justify the appellant in the sale of liquor within proper and prescribed hours? and should the accommodation be confined or extended as much as possible, according to the necessity of the case? There is no doubt in my mind that he may sell in every room of the dwelling-house, from the garret to the cellar inclusive, if he chooses, all kinds of liquors; he is not confined to the bar-room, although, for purposes of convenience, the holders of licenses, it is presumed, for the most part confine the sale of liquors to bar-rooms; the vital question here is, may he sell outside of the dwelling-house? In other words, what ground is covered by the license? It must be borne in mind that the Act in question is not primarily one for the better prevention of drunkenness, as is the case with the Imperial Act, 35-36 Vict., cap. 94, for, although it puts restrictions upon the persons and provides for the regulation of taverns, it is primarily and ostensibly a "Liquor License Act" with a view to revenue for the Province and the municipalities, and the duties of the Inspector are more pointed to the objects of revenue than they are to the suppression of drunkenness and vice.

This case is not precisely the same in *form*, but it is largely in *principle* like *The Queen* v. *Raffles*, L. R., 1 Q. B. Div. 207. In that case an information was laid against an innkeeper for selling intoxicating liquors *at a place not authorized by his license;* here it is *for selling without a license*—the effect of both is the same. There the license was to sell intoxicating liquors by retail at 1 Blundell Street, Liverpool, and when the license was granted there was adjacent to the house a vacant piece of land in different occupation and ownership, having a frontage on Blundell Street of twelve feet eight inches, and a frontage in another street called Jamaica Street of thirteen or fourteen feet. That vacant land was subsequently leased to the owner of 1 Blundell Street, who then enlarged the house by building on the vacant land, and an entrance was made on Jamaica Street. The whole building was in the occupation of the licensee, and intoxicating liquors were sold in the added part. An information was laid charging that Stedman, the licensee, sold liquor in a place where he was not authorized by his license. The Magistrate decided that the premises were the same. It was held that the license must be taken to mean whatever could be fairly called 1 Blundell Street, and that the Magistrate's decision was not wrong; that if he had held that the addition of a whole street of houses had been made it would have been covered by the licence, the case might be different, but the adding of only twelve feet was immaterial.

In this case I think the premises known as "Fraser House" comprehended what is colloquially intended by the expression *premises, i. e.*, lands as well as houses, and not one house, but the dining booth, the sheds, outhouses, and all the appurtenances within the curtilage, and the appellant's license covers the whole premises occupied by him for purposes for which the li-

cense was undoubtedly granted, that he has as much right to sell on the lawn in front of his house to his guests recreating themselves out there, or in a tent, or in the open air, or to those cooling themselves in a summer-house or under a shade tree on his premises, as he has to do so in his bar-room in the house ; that his license in fact covers the house and premises in his occupation as owner of the "Fraser House" and grounds, which I take to be identical with what is described in the license ; and whilst the law sanctions the retailing of liquors by the glass, and the revenue is satisfied by the appellant's paying for a license for those premises, it cannot be maintained that a prosecution or a conviction can be supported as a breach of the 39th section of the Act, when it is well known that the license he holds was intended to authorize such sale on premises clearly within the intention of all concerned when the license was granted. The appellant does not keep an inn within the ordinary acceptation of the term, for the accommodation of wayside travellers, although the licensing of inns and taverns is primarily for the accommodation of both man and horse. The people who resort thither are, no doubt, most of them travellers, in the sense that they do not belong to the locality, and that they go to and resort there and return from thence by train or carriages ; still it is a place of public resort for recreation, refreshment, and amusement. No one ordinary house would hold all the people who go there, and no one dining-hall would seat them within the hostelry, but in order to obtain more enlarged accommodation, an outside booth or room is fitted up for a dining-hall, and an outside house is also fitted up as a bar-room, *and on the appellant's premises* (if I understand the meaning of the word "premises"). I have no doubt that ordinary tavern-keepers would be fully justified in selling—and do in fact sell liquors—in any part of the premises they occupy, in so far as the license is concerned, and in so far as tavern regulations do not *forbid such sale*, in other places than the bar-rooms of the premises prescribed, and I do not see why this appellant might not do so too. It is a common usage in England for innkeepers under the one license to have a bar fitted up for the higher class of customers to sit down together, and a barmaid to wait upon them, and to open a common tap-room as well for the accommodation of customers of a lower grade in society, who are always more happy amongst themselves, and whose wants are attended to by a waiter ; and I suppose it is lawful for innkeepers in this country to do the same. Were a license required by law to be taken out, authorizing inkeepers to sell victuals or meals by retail, or food or fodder for horses or cattle, in a tavern, on the same terms and conditions and subject to the same restrictions as surround this license, and this appellant were licensed so to sell, "*on the premises known as 'Fraser House,'*" (and there is nothing whatever to hinder the Legislature from passing such an enactment), I think no complaint could be reasonably made, or a conviction sustained, were this appellant to sell such meals in an open booth outside the house, or food and fodder for horses and cattle *in a stable or cattle shed* "*on the premises*," particularly where many hungry people required meals and thirsty ones wanted drink. The same rule of construction must be applied to both alike, for it is perfectly lawful to sell meals, or liquors, or food, or fodder without restraint, unless the law steps in and requires, as in the case of innkeepers, that there should be a license first taken out or a revenue derived from such traffic. The accommodation of the public is what is insisted upon as one of the essentials in the matter of granting licenses for keeping a tavern, and as the keeping a bar-room on the premises outside the dwelling-house, was so clearly for the accommodation of the great crowds of people who resort to the premises, and so manifestly for the convenience, orderliness, quiet and comfort of those who are either boarders, guests, or invalids, or permanent residents for the season, in this healthful resort ; I think it is placing the license within a too narrow construction to say that the accommodation should be necessarily confined to the dwelling-house, and within the narrowest limit, and that the right to sell under it does not extend to the grounds outside. It has all the name of "*Fraser House*" in common parlance, and a person may be said to go up to "*Fraser House*" when he is at Port Stanley, without even going inside the building which constitutes the hostelry, just as a person may be said to go to the "Stevenson House," or to the "Spring Bank Hotel," at St. Catharines, when he merely goes to the baths on those premises, without even once entering the parts of them which constitute the respective hostelries.

There is another view in which this question may be tested, and from which we may see what may be included within the expression "the premises known as 'Fraser House." It was competent for the appellant to apply or and obtain one of two licenses, (the license by wholesale being now abolished) viz.: a tavern licence such as he has, or a shop license, (see sub-sections 2 and 3 of section 2 of the Act, sub-section 4 is repealed). "A tavern license" must be construed to mean a license for selling, bartering, or trafficing, by retail in fermented, spirituous or other liquors in quantities of less than one quart *which may be drunk in the inn*, ale, or beer house, or other house of public entertainment in which the same liquor is sold. "A shop license" must be construed to mean a license for selling, bartering, or trafficing by retail in such liquors in shops, stores, or places other than inns, ale or beer-houses, or other houses of public entertainment, in quantities not less than three half-pints at any one time, to any one person, and at the time of sale to be wholly removed and taken away in quantities not less than three half-pints at a time. Then if the appellant had opened a shop at the Fraser House, as he might have done, he would be entitled to this shop licence, which would have authorized him to sell those liquors by retail in prescribed quantities, provided that the liquors sold were *not consumed, but wholly removed and taken away from his premises*. Then supposing the removal and taking away consisted in carrying the liquors from the hostelry or dwelling-house to the house where the respondent contends by this prosecution he has no right to sell, I am of opinion, on the authority of decided cases, the appellant might be complained of, and properly convicted for selling illegally, and allowing liquors so sold to be consumed on the premises, and what may be construed as part of the *restricted* or *prohibited* premises for one purpose must be regarded as part of the *licensed* premises for the other purpose. The Interpretation clause of the Act (section 2) gives as the meaning of the expression "Tavern License," viz.: a licence for selling, bartering, or trafficing by retail "in quantities less than a quart all kinds of liquors *which may* (it does not say *must*) be drunk in the Inn, Ale, or Beer-house, or other house of public entertainment in which the same liquor is sold." Now the selling is the act of the licensee, and the drinking is the act of the purchaser—so that if the license be to sell *on the premises* and *to allow to be drunk in the Inn*, &c., the liquor so sold, I cannot see why the inn-keeper may not sell the liquor on the premises to be drunk anywhere the purchaser pleases. I think no one ever doubted the right of an inn-keeper to sell liquor to a passing traveller who might choose to stop at his door and call for a glass of ale and serve it up to him sitting on his horse on the public highway outside his house, because it would be answering the purpose of his calling to do so, nor can I see any reason why customers may not be served in the same way under our License Act in any part of the premises the landlord fits up and uses for the reception and convenience of his customers and guests.

A shop license gives leave to a licensee to sell by retail in shops, stores, or places other than inns, ale, or beer-houses, or other houses of public entertainment, in prescribed quantities, all kinds of liquors which are to be wholly removed and taken away from the premises. I suppose he may sell in his shop or from his cellar or out-house, and the leave to sell is common to the inn-keeper licensee, and the shop-keeper licensee alike (except as to quantities), but the places for drinking of the articles sold (which is to be the act of the purchaser in both cases) is diverse and not common.

I have met with the report of an English case recently, which I am not able to lay my hand upon at present, wherein a person licensed to sell liquors in fixed quantities to be drunk *off the premises*—hired a room at no great distance from his place of business, and there his customers resorted to drink and smoke together;—on complaint, he was convicted of a breach of the License Law, for an evasion of duty or excise payable upon licenses by retail, and the conviction was upheld; for the premises where the liquor was consumed, were held to be within the same curtilage.

The place where the liquor was sold by this appellant was within the same enclosure or curtilage as the dwelling-house or hostelry; (see cases cited *post*); and which for purposes of public convenience and the comfort of his other guests, are so far removed from the house as to prevent its being made a nuisance to them, and still might be regarded as belonging to the hostelry. I think, therefore, it had a

right to be regarded as part and parcel of the premises known as "Fraser House," referred to in the license. It is quite true that were an accusation made against a person for burglariously entering that same building in the nighttime—wherein it is acknowledged the appelt lant sold liquors—a conviction could not follow, because it is not connected with the dwelling-house by a covered in way; but that would be in consequence of special enactment, which is exceptional, and which declares that unless there is a communication immediate, or by a covered in way, with the house, no such building should be deemed part of the dwelling-house. In the absence of any such enactment, the presumption of law would be otherwise. (See cases cited *post.*) At all events, in a case like the present, where the appellant has a license and has paid the duty, and his house largely accommodates the public in every sense of the term, both for eating and drinking, I think the public have no right to make him pay for a second license; nor do I see how, under our License Acts, he either should or why he need take out a licence for such a place as the one for which he was convicted of selling in. Other innkeepers having gardens and pleasure grounds, supply their guests at any place where refreshments are ordered, within their premises, and this appellant had a right to do the same; he had a right to sell liquor on the lawn in front of the house and in the house, or on the verandah outside the house, or in any place in the open air; and I think he had the same right to sell within the curtilage of the dwelling, in any building on the premises, although it is not built close up to the dwelling-house, even if there is no communication immediate between the two, or a covered in way as would be necessary in a case of an accusation for burglary; so that if the appellant had a right to sell liquor, and if it might be consumed in the house or outside, it is no breach of the license for it to be consumed anywhere.

I think the conviction was wrong in point of law and upon the facts; and that the conviction must be quashed with costs, which I fix at $10, besides expenses of summoning witnesses and witness' fees.

Conviction quashed.

(The following authorities were referred to by the learned Judge: *Rex* v. *Clayburn*, R. & Ry. c. c. 360; *Rex* v. *Chalking*, R. & Ry., c. c. 334; 3 Inst., 64; 1 Hale, 558; 1 Mood. c. c. 13; *Rex* v. *Walters*, 1 Mood. c. c. 13; and *Brown's case*, 2 East, P. C., 501, 502; and *Cross* v. *Watts*, 13 C. B., N. S., 239.

LAW STUDENTS' DEPARTMENT.

The Benchers have taken action on the petition for the re-establishment of the Law School, and it is probable that it will be restored in much the same shape as before.

We continue the publication of the Law Society Examination questions. The following are some of those of last Trinity Term:—

CERTIFICATE OF FITNESS.

Smith on Contracts—Statute Law, &c.

A. and B. play at cards, and B. loses $100, for which he gives A. his note, payable to A. or bearer on demand. A. sues upon the note. Has B. a good defence? Give reason for your answer.

A., a carpenter, twenty years of age, agrees, in writing, to build a house for B., and to have the same completed in sixty days, and in default to be liable to a penalty of $5 a day for each day's delay after the sixty days. Default is made. Can B. recover the penalty? Give reasons for your answer.

How far is a husband liable for necessaries supplied his wife? How far can he limit his liability by notice not to trust her?

What is the duty respectively of the Court and jury with reference to the construction of written instruments? Answer fully.

In proceedings in ejectment, under what circumstances can a defendant obtain security for costs?

Under what circumstances can a writ of replevin be issued without a judge's order? What material is necessary?

What is necessary to be done to procure the attendance of the opposite party at the hearing or trial of a civil cause if you desire to call such opposite party as a witness? What is the effect of the non-attendance of the party when the proper steps are taken?

Can you sue a justice of the peace for any-

thing done by him in the execution of his office in the County Court or Division Court? Has he any, and what remedy?

A. calls upon B. and introduces C., whom he states to be an honest and reliable man and worthy of credit to the extent of a couple of hundred dollars (A. well knowing C. to be a man of no means and bad credit). B. sells C. goods, which C. never pays for. B. sues A. for the false and fraudulent representation made by him as to C.'s honesty, &c. Can B. recover? Explain fully, with reasons.

Equity Jurisprudence.

State the principal defences which may be set up to a suit for Specific Performance independently of the Statute of Frauds.

Explain the jurisdiction, (1) at Law, and (2) in Equity, respecting Interpleader.

What is "Mistake of Title," and what relief will be allowed to one making improvements on land under a mistake of title?

Describe the ordinary proceedings in a suit for the administration of the estate of an intestate or testator which may be taken before one of the local Masters in Chancery.

Define the (1) exclusive, (2) concurrent, and (3) auxiliary jurisdiction of equity.

State how far equity will enforce (1) voluntary trust raised by will, and (2) an executory trust raised by covenant or agreement.

Explain how implied trusts are often created by charges made on real estate.

State how far equity will enforce an agreement for purchase which has been entered into for the purpose of acquiring a right to complain of a fraud.

State the order of administration of different properties in the payment of debts and legacies.

Leith's Blackstone—Taylor on Titles.

Can one joint tenant, under any circumstances, compel his co-tenant to account to him, (1) for rent received from the property, (2) for exclusive possession of the property, (3) for timber cut and removed?

In what cases must a person entitled to a distributive share of an intestate's estate bring into hotchpot benefits received by him during the lifetime of the deceased? Distinguish between realty and personalty.

What is the legal signification of the word *month?*

What do you understand by deeds of revocation of uses? Explain fully.

What becomes of land held by a corporation upon its dissolution or extinction? Explain.

Under a contract of purchase which is never completed, the vendee enters into possession. At what time will the Statute of Limitations commence to run in his favour?

What statutory provision is there by which in ejectment the plaintiff is entitled to judgment unless the defendant gives security for costs? Answer fully.

What is the distinction between the necessity for registration of a disentailing deed on the one hand, and of any other conveyance on the other?

Under what circumstances are tenants entitled to emblements?

Under what circumstances will the denial by the tenant of his landlord's title, work a forfeiture of his estate?

EXAMINATION QUESTIONS AND ANSWERS.

Q.—Give instances of justifiable and excusable homicide respectively.

A.—*Justifiable homicide.* (i.) When the proper officer executes a criminal in conformity with his legal sentence; (ii.) when an officer of justice, or one assisting him, in the legal exercise of his duty, kills a person who resists arrest and who cannot otherwise be taken, or who flies to avoid arrest for felony and is killed in the pursuit; (iii.) when a gaoler kills a prisoner to prevent his escape; (iv.) when an officer, in endeavouring to disperse the mob in a riot; (v.) when the homicide is committed in the prevention of a forcible and atrocious crime, as murder, burglary, or robbery.

Excusable homicide. (i.) When a person doing a lawing act without any intention of hurt accidentally kills another; (ii.) wnen, in the course of a sudden brawl or quarrel, a person, to save his own life, kills another who assaults him. (Harris and Tomlinson, Cr. L. 2nd ed, 151-154.)

REVIEWS.

The Law of Registration of Titles in Ontario, by Edward Herbert Tiffany, of Osgoode Hall, Barrister-at-Law, Toronto. Carswell & Co., Toronto.

No one who takes any interest in the legal literature of Ontario can fail to have been impressed and gratified during the last few years by its rapid progress in extent and variety. It is true that we cannot boast of great original works on the fundamental principles of law, no Story or Sugden having as yet appeared amongst us, and it will be generally conceded that our legal writers have shewn wisdom in confining themselves, as a general thing, to the less ambitious, but more immediately useful task of explaining and commenting on the more important chapters of our Provincial Statues, and the cases decided upon them. It is somewhat remarkable that the Registry Act should have remained as long without a commentator, for there is no statute which exercises a wider or more practically important influence, lying as it does at the foundation of the whole conveyancing system of this country. Mr. Tiffany refers in his preface to two previous manuals on registration, but as they date back to 1857 and 1866 and are rarely, if ever, available for reference at the present time, the work now under review is fairly entitled to the distinction of being the first in its special field. We have not space to enter into a detailed criticism of the work before us, but have no hesitation in saying that it will be found of great value by all who are engaged in the practice of conveyancing and searching titles. It consists of full annotations of the Registry Act, R. S. O., cap. III., followed by an appendix of practical forms, a tariff of fees, &c. There is also a brief introduction, giving a condensed account of the origin and development of our provincial system of registration. There is a great deal that is exceedingly dry and formal in this Act, such as the sections relating to the appointment and duties of the registrars themselves, the manner of registering different instruments, &c., but this fact has not hindered the author from giving a full and satisfactory account of them. It is, however, in his tenth chapter, in which he comments on the section coming under the head of "Effect of registering or omitting to register," that Mr. Tiffany has put out most force, and his excellent discussion of the important questions raised by these sections, such as purchase for valuable consideration, and actual and constructive notice, is, we think, sufficient in itself to recommend his work to the favourable consideration of the profession.

CORRESPONDENCE.

Division Courts—Vouchers.

To the Editor of the Canada Law Journal:

Sir,—I was surprised the other day to find that it is the practice in at least one of the Courts of this county, when a note is given to the Clerk for suit, to annex it to the original summons, and for the process server to carry it about in his pocket with other papers until service is effected. This practice strikes me as likely to lead to difficulty. What say you?

Yours, etc.,

Toronto, Sept. 6. Attorney.

[The practice spoken of certain seems open to grave objection. Vouchers of this kind should be kept by the Clerk in the safest place he can find, and that is certainly not the pocket of the person who serves papers, whether he be bailiff or bailiff's assistant. The loss of a promissory note might cause serious difficulty, perhaps entail loss on the Clerk himself, who is certainly not using due care in the preservation of papers left with him. The safest plan would be for the suitor to give to the Clerk a copy of the note and not the original, which, however, should be produced before judgment given. If, however, the note is handed to the Clerk, he should make, or call upon the plaintiff to make a copy of the note to be attached to the original summons.—Eds. L. J.

Law Society of Upper Canada.

OSGOODE HALL.

TRINITY TERM. 45TH VICT.

During this Term the following gentlemen were called to the degree of Barrister-at-Law. The names are placed in the order of merit:—

CALLED WITH HONOURS.

John Henry Mayne Campbell.

CALLED.

George Anthony Watson, John Sanders Macbeth, Horace Edgar Crawford, George Gordon Mills, Jeffrey Agar McCarthy, Charles Miller, Allan McNab, James Scott, Conrad Bitzer, William Elliott Macara, Samuel George McKay, James Brock O'Brian, Frederick Herbert Thompson, Frederick William Kittermaster, Alexander Ford, James Walter Curry, Edward Norman Lewis, Frederick Case, Abraham Nelles Duncombe, William Franklin Morphy.

The following gentlemen who passed their examination in Easter Term, 1881, were also called to the Bar this Term:—

Frederick Faber Harper, Solomon George McGill.

The following gentlemen were admitted into the Society as Students-at-Law, namely:—

GRADUATES.

Hugh St. Quentin Cayley, William Durie Gwynne, Thomas Chalmers Milligan, Alpin Morrison Walton, Douglas Armour, Thomas B. Bunting, Walter Laidlaw, Thomas Joseph Blain, George Washington Field, Samuel Clement Smoke, Henry Herbert Collier, Frederick W. Hill, Charles William Lasby, John Bell Jackson, James Metcalf McCallum, Thomas Edward Williams, George Morton, Frederick Ernest Nellis, Alexander Cameron Rutherford, Frank Henry Keefer, Lucius Quincy Coleman, Henry Thomas Thibley, Joseph Wesley St. John, John Douglas.

MATRICULANTS OF UNIVERSITIES.

Edward W. Hume Blake, Herbert Carlton Parks, Edward Charles Higgins, William H. Holmes, R. S. Smith, John Wesley White, John Paul Eastwood.

JUNIOR CLASS.

William Murray Douglas, George Marshall Bourinot, Thomas Urquhart, Alexander William Marquis, John Bell Dalzell, Osric L. Lewis, Frederick Stone, Alexander David Hardy, Donald James Thomson, Joseph Coulson Judd, Parker Ellis, John O'Hearn, Francis McPhillips, Henry Clay, Robert Casimir Dickson, Arthur Clement Camp, John Carson, Douglas Harington Cole, Thomas Steele, Andrew Charles Halter, Matthew Joseph McCarron, Robert G. Fisher, Charles Meek, W. H. F. Holmes, Paul Kingston, Harry George Tucker, Richard Vanstone.

And the Preliminary Examination for Articled Clerks was passed by William Mansfield Sinclair.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as articled clerks or students-at-law shall give six weeks notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

Articled Clerks.

1881.
- Ovid, Fasti, B. I., vv. 1-300; or, Virgil, Æneid, B. II., vv. 1-317.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law

CLASSICS.

1881.
- Xenophon, nabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero in Catilinam, II., III., IV.
- Ovid, Fasti, B. I., vv. 1-300.
- Virgil, Æneid, B. I., vv. 1-304.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, (B. G. B. IV. c. 0- 36, B. V., c. 8-23.)
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles V. XIII.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose.

MATHEMATICS.

Arithmetic; Algebra, to end of Quadratic Equations; Euclid Bb. I., II., III.

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a selected Poem :—

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

1882.—The Deserted Village.
The Task, B. III.

1883.—Marmion, with special reference to Cantos V. and VI.

1884.—Elegy in a Country Churchyard.
The Traveller.

1885.—Lady of the Lake, with special reference to Canto V.
The Task, B. V.

HISTORY AND GEOGRAPHY.

English History from William III. to George III., inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy, and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek :—

FRENCH.

A paper on Grammar.

Translation from English into French Prose :—

1881.—Emile de Bonnechose, Lazare Hoche.

OR, NATURAL PHILOSOPHY.

Books.—Arnott's Elements of Physics, 7th edition, and Somerville's Physical Geography.

A student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing, (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law; Underhill on Torts; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

The Primary Examinations for Students-at-Law and Articled Clerks will begin on the Second Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

The Second Intermediate Examination, on the 3rd Tuesday, except in Trinity Term.

The First Intermediate, on the 3rd Thursday, except in Trinity Term.

The Attorneys' Examination, on the Wednesday, and the Barristers' Examinations, on the Thursday before each of the said Terms.

FEES.

Notice Fees	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Attorney's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fees each,	1 00
Fee in Special Cases additional to the above	200 00

The following changes in the Curriculum will take effect at the examination before Hilary Term, 1882:—

FIRST INTERMEDIATE.

Williams on Real Property; Smith's Manual of Common Law; Smith's Manual of Equity; the Act respecting the Court of Chancery; Anson on Contracts; the Canadian Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117 R.S.O. and Amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone (2nd edition); Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages and Wills); Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act; Caps. 95, 107 and 130 of the Revised Statutes of Ontario.

FOR CERTIFICATE OF FITNESS.

Taylor on Titles; Hawkins on Wills; Taylor's Equity Jurisprudence; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and the Pleadings and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills; the Statute Law and the Pleadings and Practice of the Courts.